

Introduced by Senator WaltersFebruary 19, 2014

An act to amend Sections 1170.125 and 1192.7 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1084, as introduced, Walters. Human trafficking.

Existing law, as added by Proposition 8, adopted June 8, 1982, and amended by Proposition 21, adopted March 7, 2000, among other things, defines a serious felony. Existing law, also added by Proposition 8, adopted June 8, 1982, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply, including individuals with current and prior convictions of a serious felony, as specified. The Three Strikes law specifies that references to code sections contained in its provisions, including references to the definition of a serious felony, are to those statutes as they existed on November 7, 2012. The Legislature may directly amend Proposition 8 and Proposition 21 by a statute passed in each house by a $\frac{2}{3}$ vote, or by a statute that becomes effective only when approved by the voters. The Legislature may directly amend Proposition 36 by a statute passed in each house by a $\frac{2}{3}$ vote and the Governor concurring, or with a majority vote to be placed on the next general ballot, or by a statute that becomes effective when approved by a majority of the electors.

This bill would add human trafficking to the definition of a serious felony, as specified. The bill would specify that references to code sections contained in the Three Strikes law are to those statutes as they exist January 1, 2015. Because the bill would impose additional duties

on local prosecutors, and because it would expand the punishments for existing crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170.125 of the Penal Code is amended
2 to read:

3 1170.125. Notwithstanding Section 2 of Proposition 184, as
4 adopted at the November 8, 1994, General Election, for all offenses
5 committed on or after ~~November 7, 2012~~ *January 1, 2015*, all
6 references to existing statutes in Sections 1170.12 and 1170.126
7 are to those sections as they existed on ~~November 7, 2012~~ *January*
8 *1, 2015*.

9 SEC. 2. Section 1192.7 of the Penal Code is amended to read:

10 1192.7. (a) (1) It is the intent of the Legislature that district
11 attorneys prosecute violent sex crimes under statutes that provide
12 sentencing under a “one strike,” “three strikes” or habitual sex
13 offender statute instead of engaging in plea bargaining over those
14 offenses.

15 (2) Plea bargaining in any case in which the indictment or
16 information charges any serious felony, any felony in which it is
17 alleged that a firearm was personally used by the defendant, or
18 any offense of driving while under the influence of alcohol, drugs,
19 narcotics, or any other intoxicating substance, or any combination
20 thereof, is prohibited, unless there is insufficient evidence to prove
21 the people’s case, or testimony of a material witness cannot be
22 obtained, or a reduction or dismissal would not result in a
23 substantial change in sentence.

24 (3) If the indictment or information charges the defendant with
25 a violent sex crime, as listed in subdivision (c) of Section 667.61,
26 that could be prosecuted under Sections 269, 288.7, subdivisions
27 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
28 bargaining is prohibited unless there is insufficient evidence to

1 prove the people’s case, or testimony of a material witness cannot
2 be obtained, or a reduction or dismissal would not result in a
3 substantial change in sentence. At the time of presenting the
4 agreement to the court, the district attorney shall state on the record
5 why a sentence under one of those sections was not sought.

6 (b) As used in this section “plea bargaining” means any
7 bargaining, negotiation, or discussion between a criminal
8 defendant, or his or her counsel, and a prosecuting attorney or
9 judge, whereby the defendant agrees to plead guilty or nolo
10 contendere, in exchange for any promises, commitments,
11 concessions, assurances, or consideration by the prosecuting
12 attorney or judge relating to any charge against the defendant or
13 to the sentencing of the defendant.

14 (c) As used in this section, “serious felony” means any of the
15 following:

16 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
17 (4) sodomy by force, violence, duress, menace, threat of great
18 bodily injury, or fear of immediate and unlawful bodily injury on
19 the victim or another person; (5) oral copulation by force, violence,
20 duress, menace, threat of great bodily injury, or fear of immediate
21 and unlawful bodily injury on the victim or another person; (6)
22 lewd or lascivious act on a child under 14 years of age; (7) any
23 felony punishable by death or imprisonment in the state prison for
24 life; (8) any felony in which the defendant personally inflicts great
25 bodily injury on any person, other than an accomplice, or any
26 felony in which the defendant personally uses a firearm; (9)
27 attempted murder; (10) assault with intent to commit rape or
28 robbery; (11) assault with a deadly weapon or instrument on a
29 peace officer; (12) assault by a life prisoner on a noninmate; (13)
30 assault with a deadly weapon by an inmate; (14) arson; (15)
31 exploding a destructive device or any explosive with intent to
32 injure; (16) exploding a destructive device or any explosive causing
33 bodily injury, great bodily injury, or mayhem; (17) exploding a
34 destructive device or any explosive with intent to murder; (18) any
35 burglary of the first degree; (19) robbery or bank robbery; (20)
36 kidnapping; (21) holding of a hostage by a person confined in a
37 state prison; (22) attempt to commit a felony punishable by death
38 or imprisonment in the state prison for life; (23) any felony in
39 which the defendant personally used a dangerous or deadly weapon;
40 (24) selling, furnishing, administering, giving, or offering to sell,

1 furnish, administer, or give to a minor any heroin, cocaine,
2 phencyclidine (PCP), or any methamphetamine-related drug, as
3 described in paragraph (2) of subdivision (d) of Section 11055 of
4 the Health and Safety Code, or any of the precursors of
5 methamphetamines, as described in subparagraph (A) of paragraph
6 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
7 11100 of the Health and Safety Code; (25) any violation of
8 subdivision (a) of Section 289 where the act is accomplished
9 against the victim's will by force, violence, duress, menace, or
10 fear of immediate and unlawful bodily injury on the victim or
11 another person; (26) grand theft involving a firearm; (27)
12 carjacking; (28) any felony offense, which would also constitute
13 a felony violation of Section 186.22; (29) assault with the intent
14 to commit mayhem, rape, sodomy, or oral copulation, in violation
15 of Section 220; (30) throwing acid or flammable substances, in
16 violation of Section 244; (31) assault with a deadly weapon,
17 firearm, machinegun, assault weapon, or semiautomatic firearm
18 or assault on a peace officer or firefighter, in violation of Section
19 245; (32) assault with a deadly weapon against a public transit
20 employee, custodial officer, or school employee, in violation of
21 Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an
22 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
23 (34) commission of rape or sexual penetration in concert with
24 another person, in violation of Section 264.1; (35) continuous
25 sexual abuse of a child, in violation of Section 288.5; (36) shooting
26 from a vehicle, in violation of subdivision (c) or (d) of Section
27 26100; (37) intimidation of victims or witnesses, in violation of
28 Section 136.1; (38) criminal threats, in violation of Section 422;
29 (39) any attempt to commit a crime listed in this subdivision other
30 than an assault; (40) any violation of Section 12022.53; (41) a
31 violation of subdivision (b) or (c) of Section 11418; (42) *human*
32 *trafficking in violation of Section 236.1*; and ~~(42)~~ (43) any
33 conspiracy to commit an offense described in this subdivision.

34 (d) As used in this section, "bank robbery" means to take or
35 attempt to take, by force or violence, or by intimidation from the
36 person or presence of another any property or money or any other
37 thing of value belonging to, or in the care, custody, control,
38 management, or possession of, any bank, credit union, or any
39 savings and loan association.

1 As used in this subdivision, the following terms have the
2 following meanings:

3 (1) “Bank” means any member of the Federal Reserve System,
4 and any bank, banking association, trust company, savings bank,
5 or other banking institution organized or operating under the laws
6 of the United States, and any bank the deposits of which are insured
7 by the Federal Deposit Insurance Corporation.

8 (2) “Savings and loan association” means any federal savings
9 and loan association and any “insured institution” as defined in
10 Section 401 of the National Housing Act, as amended, and any
11 federal credit union as defined in Section 2 of the Federal Credit
12 Union Act.

13 (3) “Credit union” means any federal credit union and any
14 state-chartered credit union the accounts of which are insured by
15 the Administrator of the National Credit Union administration.

16 (e) The provisions of this section shall not be amended by the
17 Legislature except by statute passed in each house by rollcall vote
18 entered in the journal, two-thirds of the membership concurring,
19 or by a statute that becomes effective only when approved by the
20 electors.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.